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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Simba USA, LLC; New Western Supply, LLC

File: B-401971; B-401971.2

Date: December 28, 2009

Garret E. Weyand, Simba USA, LLC, and Todd Coons, New Western Supply, LLC, for the protesters.

LTC Michael L. Norris, Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee will comply with solicitation's domestic production requirements where, prior to award, the agency sought and received awardee's signed certification regarding compliance, and agency record includes awardee's detailed identification of sources and suppliers for the various components of the product to be provided.

DECISION

Simba USA, LLC, of Morehead, Kentucky, and New Western Supply, LLC, of Fort Knox, Kentucky, protest the Department of the Army's issuance of a task order to Windhaven International, Inc., of Woodstock, Illinois, pursuant to request for quotation (RFQ) No. W9124D-09-T-0154 to provide 60,000 towels. Simba and New Western allege that Windhaven will not comply with the solicitation's domestic production requirements.

We deny the protests.

BACKGROUND

In September 2009, the Army released the RFQ at issue, seeking quotations to provide 60,000 cotton velour terry beach towels to be used in connection with the Army's recruiting activities. The solicitation provided that a task order would be

issued on the basis of the lowest-priced, responsive quotation, and included provisions requiring that the towels be domestic end products.¹ AR, Tab 3.

On or before the September 11, 2009 closing date, the Army received quotations from thirty-five firms, including Windhaven, Simba, and New Western. The quotations ranged from a low of \$388,200 (Windhaven's quotation) to a high of \$1,078,200. Simba's quotation of \$537,000 ranked 16th; New Western's quotation of \$766,800 ranked 33rd. AR, Tab 2, Contracting Officer's Statement, at 1-2.

On September 18, the contracting officer asked Windhaven to confirm that its quotation was for towels that were "in fact 100% American Made," and to submit a certification to that effect. Windhaven responded by providing the requested certification, signed by an authorized representative. AR, Tabs 6, 7. Thereafter, the agency issued the task order to Windhaven. These protests followed.

DISCUSSION

Simba and New Western each protest that Windhaven will not comply with the solicitation's domestic production requirements. As discussed below, we find no basis to question the agency's determination to the contrary.

When an offeror/vendor responds to a solicitation by representing that it will furnish products that comply with a solicitation's domestic production requirements, an offeror/vendor is contractually obligated to comply with such representation. Absent a basis to question an offeror/vendor's representation in this regard, an agency may properly rely on the representation in making its source selection decision. Nonetheless, where an agency has reason to believe that a firm will not provide compliant products, the agency should go beyond the firm's representations to verify compliance, and our Office will review a procuring agency's actions to ensure that the agency's assessments and conclusions were reasonable. See, e.g., Pacific Lock Co., B-309982, Oct. 25, 2007, 2007 CPD ¶ 191 at 4; General Kinetics, Inc., Cryptek Div., B-242052.2, May 7, 1991, 91-1 CPD ¶ 445 at 7.

Here, as noted above, prior to issuing the task order to Windhaven, the agency specifically sought, and received, Windhaven's confirmation and certification that

¹ More specifically, the solicitation stated that the towels must be "USA Made"; incorporated the clause from section 52.225-1 of the Federal Acquisition Regulations (FAR), titled "Buy American Act--Supplies"; and also incorporated the clause from section 25.225-7012 of the Defense FAR Supplement, titled "Preference for Certain Domestic Commodities," which implements the Berry Amendment, 10 U.S.C. § 2533(a) (2006), and generally restricts the Department of Defense's expenditure of funds for certain items to domestically produced products. Agency Report (AR), Tab 3, RFQ at 4, 10, 24.

Windhaven would comply with the solicitation's domestic production requirements. Further, Windhaven's quotation was not out of line with the quotations submitted by several other responsive firms. On this record, we see no basis to question the agency's reliance on Windhaven's pre-award representation and certification.

Further, following receipt of Simba's and New Western's protests, and before submitting its report to this Office defending against these protests, the agency again contacted Windhaven, specifically requesting additional information regarding the basis for Windhaven's representations regarding compliance with the domestic production requirements. Among other things, the agency's communication with Windhaven stated:

Prior to award of the contract, you certified compliance with the Berry Amendment and provided a signed copy of the Buy American Certificate. Given the feedback I received [from the protesters], I again need to confirm that you are in compliance with both of these legal requirements.

Specifically, the Buy American Act requires that the towel is a domestic end product, meaning it is manufactured in the United States (or a qualifying country) and the cost of components produced or manufactured in the US (or a qualifying country) exceeds 50 percent of the cost of all components The Berry Amendment further requires that the towel must not only be manufactured in the United States, but it must also be made with cotton 100% grown and processed in the United States. . . . I need you to confirm that the towel is 100% made in the US of cotton that is grown and processed in the US.

AR, Tab 12, at 5.

In response, Windhaven provided a detailed list of its sources/suppliers for each component of the towels it intends to provide.² Id. at 1-4.

We have reviewed the agency's comprehensive record regarding this matter and, on the basis of the information discussed above, we find no basis to question the

² The information itself is proprietary to Windhaven, and we will not discuss that information in this decision, nor otherwise publicly disclose it.

agency's determination regarding Windhaven's compliance with the solicitation's domestic production requirements.

The protests are denied.

Lynn H. Gibson
Acting General Counsel